

**Testimony of Eugene R. Morabito,
Attorney for
ANR Pipeline Company and
Great Lakes Gas Transmission Limited Partnership**

**Before the
Committee on Commerce, Utilities and Rail**

March 10, 2008

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before you and to offer comments in support of the Bill amending Wis. Stats. §§ 706.09(3)(a) and 893.33(5). These amendments provide a necessary clarification of the Wisconsin law relating to right of way pipeline easements held by natural gas companies.

I appear before you today on behalf of ANR Pipeline Company (ANR) and Great Lakes Gas Transmission Limited Partnership (Great Lakes), two natural gas pipeline companies whose interests are affected by the proposed amendments.

ANR operates one of the nation's largest interstate natural gas pipeline transportation systems which is regulated by the Federal Energy Regulatory Commission ("FERC"). ANR provides storage, transportation and various capacity related services to a variety of customers. ANR has approximately 10,600 miles of pipeline stretching from producing areas and into the South and the upper Midwest, including over 1,800 miles of pipeline in the State of Wisconsin. ANR cannot discontinue a provision of natural gas transportation services without authorization from FERC.

Great Lakes is similarly regulated by FERC. Great Lakes transports more than 2.2 billion cubic feet of natural gas per day through approximately 2,100 miles of dual, high-pressure pipelines, which extend from the international boundary near Emerson, Manitoba, through the states of Minnesota, Wisconsin, and Michigan, to the international boundary near Sault Ste. Marie and St. Clair, Michigan.

Both ANR and Great Lakes procure and maintain right of way easements in multiple jurisdictions in order to operate their respective pipeline systems and furnish energy related services to their customers.

Under Wisconsin law and the law in general, right of way easements constitute real property interests. The proposed amendments at issue specifically address and rectify any ambiguities regarding the proper application of Wisconsin's notice re-filing requirements to such real property interests.

As currently enacted, Wis. Stat. § 706.09 operates to extinguish any interest in real property if the owner fails to re-file notice of that interest in the public land record every 30 years. A related statute of limitations provision, Wis. Stat. § 893.33, operates to bar

any action or defense concerning an interest in real property if the recorded interest is more than 30 years old.

There are, however, exceptions to the present re-filing requirements. Wisconsin law does not impose a re-filing requirement for certain entities and utilities, including public service corporations, electric cooperatives, railroads, and governmental units (e.g., the Wisconsin Department of Transportation). These exceptions provide a practical alternative to the multiple re-recording of easements on numerous parcels for the named entities and alleviate the administrative burden on local register of deeds offices. This results in protection of property rights which are used to provide essential services to the general public.

While ANR and Great Lakes believe that they fall under the "public service corporation" exception under the present statutory language, the proposed amendments would operate to clarify the matter by creating a specific exception for real estate owned by any natural gas company, as defined in 15 U.S.C. § 717a(6).¹ This proposed definition clearly encompasses both companies and other similarly situated natural gas pipeline companies. ANR and Great Lakes support this legislation for the following reasons:

- The nature of natural gas pipeline placement is nearly identical to the other entities currently excepted from the filing requirement
- The intent of the law is to allow purchasers of real property to be aware of interests in the property that may not be obvious—a pipeline easement is very obvious.
- Wisconsin's real estate condition report requirement mandates the disclosure of the existence of transportation pipelines during the sale of property.
- ANR and Great Lakes, like public service corporations, must comply with Wisconsin's one-call system ("digger's hotline").
- No other states in which the pipelines operate possess this type of filing requirement.
- If ANR and Great Lakes are not exempted from this statute, this requirement would cause a tremendous burden on local register of deeds offices.
- If ANR and Great Lakes are not exempted from this statute, this could lead to increased costs for natural gas transportation into Wisconsin and eventually increased costs to consumers.

In sum, the proposed amendments would clarify the scope of the notice re-filing

¹ Under federal law, "natural gas company" means a person engaged in 1) the transportation of natural gas in interstate commerce; or 2) the sale in interstate commerce of natural gas for resale.

requirements relative to right of way pipeline easements held by natural gas companies while protecting the property rights of companies providing services to the public.

In closing, I would like to state again that I appreciate the opportunity to testify before you today and would be happy to answer any questions on the matter at issue.

EASEMENT DORMANCY ISSUE

ANR Pipeline Company (ANR) operates one of the nation's largest interstate natural gas pipeline transportation systems. ANR provides storage, transportation and various capacity related services to a variety of customers. ANR has approximately 10,600 miles of pipeline in its traditional service area in the Midwest, including over 1,800 miles of pipeline in Wisconsin.

ANR is seeking legislation to clarify an ambiguity in Wisconsin law relating to easements. An easement is an interest in real property. Under Wisconsin law, an owner of an interest in real property must file a notice of that interest every 30 years. Wisconsin law also provides an exception to this filing requirement for certain entities and utilities, including:

Public Service Corporations

Electric Cooperatives

Railroads

Governmental Units (*e.g.*, WDOT)

These exceptions provide a practical alternative to the multiple re-recording of easements on numerous parcels for certain entities, and the burden it would put on local register of deeds offices. While ANR believes it falls under the "Public Service Corporation" exception, it is seeking specific language in the statutes in order to clarify an exception for natural gas transportation pipelines. ANR requests this legislation for the following reasons:

- The nature of natural gas pipeline placement is nearly identical to the other entities currently excepted from the filing requirement
- The intent of the law is to allow purchasers of real property to be aware of interests in the property that may not be obvious—a pipeline easement is very obvious.
- Wisconsin's real estate condition report requirement mandates the disclosure of the existence of transportation pipelines during the sale of property.
- ANR, like public service corporations, must comply with Wisconsin's one-call system ("digger's hotline").
- No other states in which ANR operates require this type of filing requirement.
- This requirement would cause a tremendous burden on local register of deeds offices.
- The end result could lead to increased rates for Wisconsin natural gas transportation customers and, therefore, Wisconsin consumers.